IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

T.R.C.No.591 of 2001

T.A.NO.518/1997 OF THE KERALA SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH-II, ERNAKULAM (ORDER DATED 30.4.2001)

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PETITIONER/APPELLANT/APPELLANT/ASSESSEE:-

M/S.MAMBAD RUBBER MANUFACTURING COMPANY LIMITED,
38/498C, BEHIND CHOICE TOWERS, TRIPTHI LANE,
COCHIN-6.

BY ADV. SRI.K.VINOD CHANDRAN
SRI.S.SANTHOSH

RESPONDENT/RESPONDENT/RESPONDENT/REVENUE:-

STATE OF KERALA,
REPRESENTED BY COMMISSIONER OF SALES TAX.

BY SPECIAL GOVERNMENTPLEADER (TAXES) SRI.K.B.PRADEEP.

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 07/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.Dattu,C.J. & K.T.Sankaran,J.

T.R.C.No.591 of 2001

Dated, this the 7th day of September, 2007

ORDER

H.L.Dattu,C.J.

This Tax Revision Case pertains to the assessment year 1988-89.

(2) The petitioner is a Company registered under the provisions of the Companies Act. It is also a dealer registered under the Kerala General Sales Tax Act. The petitioner Company is engaged in purchase and sale of raw rubber on commission basis for principal outside the State.

(3) The assessee, being aggrieved by the orders passed by the assessing authority as well as the first appellate authority for the assessment year in question, had filed a second appeal before the Kerala Sales Tax Appellate Tribunal, Additional Bench-II, Kottayam in Tribunal Appeal No.518 of 1997. The Tribunal by its order dated 30th April, 2001 had allowed the appeal and had remanded the matter to the assessing authority to redo the matter in accordance with the observations made by them in the course of the order. The Tribunal, in paragraph 6 of the order, has observed thus:

> "We have gone through the Tribunal order dated 30.9.2000 in respect of M/s.Metro Trading Syndicate. The appeal relates to the assessment year 1988-89. This Tribunal has found at paragraph 5 of the order that the appellant (M/s.Metro Trading Syndicate) is not entitled for exemption from levy of turnover tax under Government Notification S.R.O.No.1341/87. In the above circumstances the finding of the assessing authority that Metro Trading Syndicate was not liable to turnover tax is factually incorrect. We have gone through the declaration filed by M/s.Metro Trading Syndicate. It is seen that they have paid turnover tax amounting to Rs.5,00,000/-. We, therefore, direct the assessing authority to re-examine the claim of exemption from levy of turnover tax in respect of the appellant's transaction with M/s.Metro Trading Syndicate. The assessing authority shall allow appropriate relief on the basis of the declaration issued by M/s.Metro Trading Syndicate. The appellant shall be given an opportunity of being heard".

(4) Aggrieved by the said order passed by the Tribunal, the assessee has filed the present Tax Revision Case before this Court. The assessee has framed the following questions of law for our consideration and decision. They are as under:

> "(i) Whether on the facts and circumstances of the case the Appellate Tribunal was justified in holding that the provisions for sales/purchase tax, additional sales tax and surcharge etc. are expenses charged by the Appellant and hence have to be added on to the commission to deny the appellant the benefit conferred by SRO 1341 of 1987.
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> (ii) Whether on the facts and circumstances of the case the Appellate Tribunal was justified in holding that the packing charges, forwarding charges, insurance charges, brokerage and bank charges incurred after the purchase for and on behalf of the principals outside the State are expenses charged by the appellant and hence have to be added to the commission to deny the petitioner the benefit conferred by SRO 1341 of 1987.
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> (iii) Whether the Tribunal was justified in holding that the words "aggregate commission" including expenses charged and interest levied by the dealer in SRO 1341 of 1987 included provisions for tax, additional tax, surcharge etc.
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> (iv) Whether the assessing officer ought to have examined individual transactions in granting/exemption from turnover tax payable under Section 5(2A) in accordance with SRO.No.1341 of 1987.
>
> (v) Whether the computation of total turnover for levying turnover tax under Section 5(2A) of the KGST Act was correct".

(5) In our opinion, in view of the orders passed by the Tribunal remanding the matter to the assessing authority to redo the matter in the light of the observations made in the course of the order, it may not be necessary for us to answer the questions of law framed by the assessee one way or the other.

(6) In view of the above, the following:

Order

(i) The Tax Revision Petition is disposed of.

(ii) If for any reason the assessing authority has not completed the assessment as ordered by the Tribunal by its order dated 30th April, 2001, he shall now redo the matter in accordance with law after issuing appropriate notice to the petitioner.

Ordered accordingly.

H.L.Dattu
Chief Justice

K.T.Sankaran
Judge

vku/-